

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11415 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RANCHHODBHAI MADHABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11415 of 2001
MR HR PRAJAPATI for Petitioner No. 1
MR SS PATEL, AGP, for Respondents No. 1-3
MS PJ DAVAWALA for Respondent No. 4
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/02/2002

ORAL JUDGEMENT

1. The petitioner came to be detained under the
Prevention of Black Marketing and Maintenance of Supplies
of Essential Commodities Act, 1980 ("PBM Act" for short),

by virtue of an order passed by the District Magistrate, Banaskantha, at Palanpur, on the 15th November, 2001. The authority observed that the activities of the detenu are detrimental to smooth supply of essential commodities like food grains. The authority also observed that resorting to less drastic remedy is not possible and detention under the PBM Act is the only efficacious remedy can be resorted to for immediately preventing the detenu from pursuing his activities. The order, therefore, came to be passed.

2. The petitioner, by this petition, challenges the said order on various grounds stated in the petition. However, learned advocate Mr. Prajapati appearing for the petitioner has restricted his arguments to the fact that a representation made on behalf of the detenu to the District Magistrate on the 30th November, 2001 by Registered Post A.D. (Annexure-C), which was served to the detaining authority on the 3rd December, 2001, has not been considered by the authority concerned nor has it been forwarded to the State Government or the Central Government. The right of the detenu, therefore, is infringed and his continued detention, therefore, would be vitiated.

3. Respondents No.1, 2 and 3 are represented by learned Assistant Government Pleader Mr. Patel, whereas respondent No.4-Union of India is represented by learned Additional Central Government Standing Counsel Ms. Davawala. The Deputy Secretary to the government of Gujarat, Food and Civil Supplies Department and the District Magistrate, Banaskantha (detaining authority) have filed their affidavits-in-reply. An affidavit-in-reply is also filed on behalf of the Union of India.

4. Learned Assistant Government Pleader, Mr. Patel, has contended that the representation claimed to have been made and served on the detaining authority is not to be found in the office of the detaining authority at all. Despite all efforts, it is not possible to trace the said representation and, therefore, such representation does not appear to have been made and, therefore, there is no question of considering the representation. The detaining authority in the affidavit-in-reply has also stated that the said representation has not been received either by the detaining authority himself or the District Supply Officer or the Supply Branch. He submitted that he has made inquiries about the same in each and every branch of the office, but the same is not traceable. It is contended that the advocate of the petitioner ought to

have sent the said representation to the State Government, Central Government and the Advisory Board directly.

5. Having regard to the rival side contentions, the only question that requires to be addressed to by this Court is whether the representation claimed to have been made by the petitioner was, in fact, made or not and if it was made, what will be the effect of its non-consideration.

6. It is clear from the xerox copy produced on record of the acknowledgement slip that the representation was served to the office of the District Collector, Banaskantha, at Palanpur on the 3rd December, 2001. Learned advocate Mr. Prajapati has produced on record the postal acknowledgement slip in original which bears a rubber stamp of that office, so also the initials. It also bears stamps of postal authority through whom the representation was served. Mr. Prajapati has also produced on record the white paper slip of the representation duly stamped by the postal authority. This would indicate that the representation was, in fact, sent to the detaining authority and it was served on the 3rd December, 2001. This acknowledgement comes from an independent department of the government, namely, the postal department and there is no reason to doubt the genuineness of this acknowledgement. If such representation is not to be found from the office of the detaining authority, it is an internal administrative matter and it is for the authority concerned to decide what are the steps that are required to be taken. At this stage, at least, the Court is satisfied that representation was, in fact, sent and was received by the office of the detaining authority.

6.1 There is no dispute and there cannot be any dispute about the fact that the representation was not considered because the authority is coming up with a case of non-receipt of such representation. Non-consideration of the representation would result into infringement of the right of the detenu guaranteed under Article 22(5) of the constitution of India of making an effective representation. That having been infringed, the continued detention of the detenu would be vitiated. The petition, therefore, deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated the 15th November, 2001, passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Ranchhodbhai Madhabhai

Parmar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

8. Direct service is permitted.

[A.L. DAVE, J.]

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